

I. REAL PARTY IN INTEREST	2
II. RELATED APPEALS AND INTERFERENCES.....	2
III. STATUS OF CLAIMS	2
IV. STATUS OF AMENDMENTS	2
V. SUMMARY OF CLAIMED SUBJECT MATTER.....	2
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	5
VII. THE ARGUMENT	5
VIII. CLAIMS APPENDIX.....	12
IX. EVIDENCE APPENDIX.....	17
X. RELATED PROCEEDINGS APPENDIX.....	18

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/789,331 Confirmation Number: 9399
Filing Date: February 27, 2004
Applicant(s): Brian Levine.
Entitled: APPLYING ORDERED MODIFICATIONS TO RECURRING EVENT INSTANCES
Examiner: Tiphany B. Dickerson
Group Art Unit: 3623
Attorney Docket No.: LOT920040014US1 (7321-045U)

TRANSMITTAL OF APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is Appellant's Appeal Brief in support of the Notice of Appeal dated September 27, 2010. There is **NO FEE REQUIRED** for this Appeal Brief. Since Appellants have already paid the fee for the Appeal Brief filed February 8, 2010 pursuant to M.P.E.P. § 1207.04, "[t]he previous paid notice of appeal fee and appeal brief fee can be applied to the new appeal." Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, to Deposit Account 12-2158, and please credit any excess fees to such deposit account.

Date: December 27, 2010 Respectfully submitted,

/Steven M. Greenberg/
Steven M. Greenberg
Registration No. 44,725
Customer Number 46321

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/789,331

Confirmation Number: 9399

Filing Date: February 27, 2004

Applicant(s): Brian Levine.

Entitled: APPLYING ORDERED MODIFICATIONS TO
RECURRING EVENT INSTANCES

Examiner: Tiphany B. Dickerson

Group Art Unit: 3623

Attorney Docket No.: LOT920040014US1 (7321-045U)

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed September 27, 2010, wherein the Appellant appeals from the Examiner's rejection of claims 1-13.

I. REAL PARTY IN INTEREST

The subject patent application (the "Application") has been assigned to International Business Machines Corporation by assignment recorded on February 27, 2004, at Reel 015038, Frame 0478.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1-13 are pending in the Application and have been rejected at least twice. It is from the multiple rejections of claims 1-13 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

No claims were amended after the non-final office action dated May 25, 2010 reopening the prosecution (the "Reopen Office Action"),

V. SUMMARY OF CLAIMED SUBJECT MATTER

As set forth in paragraph [0015] of the original specification (the "Specification"), embodiments of Appellant's invention provide a system, method

and apparatus for applying ordered modifications to recurring event instances. In accordance with an embodiment of Appellant's invention, an event storage model can include event data and a corresponding recurrence rule for each recurring event. Actual event instances can be calculated on demand based upon the recurrence rule. Notably, modifications to the event instances can be specified separately for specific event properties in the event instance. Only the modified properties can be stored as an "event exception". In this way, modifications to the event instances can be calculated concurrently with the dynamic calculation of the event instances based upon the recurrence rule. Finally, stale event exceptions which have become obviated by the application of subsequent event exceptions can be purged from the storage model periodically.

With specific respect to claim 1, a method for applying ordered modifications to recurring event instances is provided. (Par. [0019]) The method includes identifying an event exception in a calendaring system executing in memory by a processor of a computer. (Par. [0019]) In this regard, the event exception corresponds to a separately defined and separately stored recurring event instance in the calendaring system. (Par. [0019]) Finally, the method includes modifying within the calendaring system at least one property of the recurring event instance based upon the separately stored event exception. (Par. [0020])

With specific respect to claim 6, a calendaring system is provided to include a computer with processor and memory and a recurrence event expander disposed within a calendaring system executing in the memory by the processor of the computer. (Par. [0016]) The expander is programmed to expand recurrence events into event instances based upon the properties specified within the recurrence events. (Par. [0016]) Also, a recurrence event modifier is disposed within the calendaring system and coupled to the recurrence event expander. (Par. [0017]) The modifier modifies properties within the event instances based upon event exceptions defined for respective ones of the event instances and separately stored from the event instances. (Par. [0017])

With specific respect to claim 9, a machine readable storage has stored thereon a computer program for applying ordered modifications to recurring event instances. (Par. [0024]) The computer program includes a routine set of instructions which when executed by a machine cause the machine to identify an event exception in a calendaring system executing in memory by a processor of a computer. (Pars. [0019], [0024]) In this regard, the event exception corresponds to a separately defined and separately stored recurring event instance in the calendaring system. (Par. [0019]) Finally, at least one property of the recurring

event instance can be modified based upon the separately stored event exception.
(Par. [0020])

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The rejection of claims 1-7 and 9-13 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,440,961 to Matousek in view of U.S. Patent Application Publication No. 2003/0061433 by Hall et al. (Hall).

The rejection of claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Matousek in view of Hall and further in view of AAPA.

VII. THE ARGUMENT

THE REJECTION OF CLAIMS 1-7 and 9-13 UNDER 35 U.S.C. § 103

On pages 3-7 of the Reopen Office Action, Examiner has rejected claims 1-7 and 9-13 as being unpatentable over Matousek in view of Hall. For the convenience of the Honorable Board, claims 2-5 stand or fall together with independent claim 1, claim 7 stands or falls together with independent claim 6, and claims 10-13 stand or fall together with independent claim 9. With respect to the Examiner's determination of obviousness on pages 3-7 of the Reopen Office Action, Section 2141 of the Manual of Patent Examining Procedure (M.P.E.P.) sets forth guidelines intended to assist personnel of the United States Patent and

Trademark Office in making a proper determination of obviousness under 35 U.S.C. 103, and to provide an appropriate supporting rationale in view recent judicial developments in regard to 35 U.S.C. § 103. Included as part of M.P.E.P. 2141 are the "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.," 73 Fed. Reg. 57,526 (2007) (hereinafter the Examination Guidelines). Section III of M.P.E.P. 2141 is entitled "Rationales To Support Rejections Under 35 U.S.C. 103."

Referring to Section III of the Examination Guidelines, the following is a list of rationales that may be used to support a finding of obviousness under 35 U.S.C. § 103:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" - choosing from finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Upon reviewing the Examiner's analysis in the paragraph spanning pages 4 and 5 of the Reopen Office Action, the Examiner appears to be employing rationale (A). If Examiner has employed a different rationale under the Examination Guidelines, Appellant requests Examiner to clearly state the rationale being applied in an Examiner's Answer.

With respect to rationale (A), the Examination Guidelines set forth a precise process for which the Examiner must follow in order to establish a prima facie case of obviousness under 35 U.S.C. § 103(a). Specifically, to reject a claim based on this rationale, Office personnel must resolve the Graham factual inquiries. Thereafter, Office personnel must then articulate the following:

- (1) **a finding that the prior art included each element claimed**, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference;
- (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely would have performed the same function as it did separately;
- (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and
- (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

In articulating a finding that the prior art included each element claimed in a rejected claim, however, as a first step the Examiner must establish a **proper construction of the claims**. In establishing a proper claim construction, though, the pending claims must be “given their broadest reasonable interpretation

consistent with the specification,”¹ and the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.² Only subsequent to establishing a proper claim construction must the Examiner compare **the properly construed claim to the prior art.**³

It is the position of Appellant that under M.P.E.P. 2141 and rationale (A) of the Examination Guidelines set forth therein, Examiner has not adequately articulated a finding that the prior art included each **properly construed** element claimed with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference.

Specifically, in as much as claims 1, 6, and 9 recite similar operative portions, exemplary claim 1 sets forth a method for applying ordered modifications to recurring event instances. For the convenience of the Honorable Board, the entirety of claim 1 has been reproduced herein as follows:

1. A method for applying ordered modifications to recurring event instances, the method comprising the steps of:

¹ In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007) (“[T]he PTO must give claims their broadest reasonable construction consistent with the specification. Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.”); In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

² In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)

³ Medichem, S.A. v. Rolabo, S.L., 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

identifying an event exception in a calendaring system executing in memory by a processor of a computer, the event exception corresponding to a separately defined and separately stored recurring event instance in the calendaring system; and,

modifying within the calendaring system at least one property of said recurring event instance based upon said separately stored event exception.

Integral to claim 1 (and also claims 6 and 9) is the identification of an event exception which corresponds to a separately defined and separately stored recurring event instance in a calendaring system.

With respect, Examiner has not properly construed the term “event exception” in each of Appellant’s independent claims. Paragraph [0015] of the specification of Appellant’s application makes it clear that an event exception refers to modified properties of an event instance. For the convenience of the Honorable Board, Paragraph [0015] of the specification of Appellant’s application is reproduced below:

[0015] The present invention is a system, method and apparatus for applying ordered modifications to recurring event instances. In accordance with the present invention, an event storage model can include event data and a corresponding recurrence rule for each recurring event. Actual event instances can be calculated on demand based upon the recurrence rule. Notably, modifications to the event instances can be specified separately for specific event properties in the event instance. Only the modified properties can be stored as an "event exception". In this way, modifications to the event instances can be calculated concurrently with the dynamic calculation of the event instances based upon the recurrence rule. Finally, static event exceptions which have become obviated by the application of subsequent event exceptions can be purged from the storage model periodically.

In contrast, in Matousek, the “exception” refers to an event instance that differs from the occurrence that would normally be created by the recurrence

pattern (col. 1, lines 46-48: "An exception to a recurrence event is an event instance that differs in any way from the occurrence that would normally be created by the recurrence pattern."). The "exceptions" of Hall, as evidenced by paragraph [0037], are not exceptions for event instances, but exceptions to a recurrence rule for an event. Paragraph [0037] of Hall makes it clear that that an "exception" is a deviation from a recurrence rule. For the convenience of the Honorable Board, Paragraph [0037] of Hall is reproduced below:

[0037] FIG. 8 illustrates the logical components, expander 70 and retractor 72, of synch engine 20. When contained in a given data store 18, each record 28 is stored in a format native to a corresponding shared data application 16. Records 28 in different data stores 18, then, can be stored in any number of formats. As described above, a recurring event can be represented by a single complex record or by a series of discrete records. When changes are made to a complex record on one device 12, synch engine 20 must be capable of updating a series of discrete records representing the same recurring event on another device 12. Expander 70 represents generally any programming capable of expanding a single complex record into a series of discrete records according the complex record's rule 34 and exceptions 36. For example, a complex record 28 may include a rule 34 indicating that a meeting is to be held every Monday and Wednesday for a two-month period at a particular time. The exceptions 36, may indicate that a time modification for the second Monday in the first month and a deletion or absence of an appointment on the first Wednesday in the second month. In this example, expander 70 would create a series of distinct records 28, one for each appointment indicated in the rule 34. Expander 70 would then delete the record created for the first Wednesday of the second month and modify the time for the record created for the second Monday of the first month.

Therefore, neither Matousek nor Hall discloses the concept "event exception" in the sense of Appellant's claimed invention. From Examiner's misconstruction of "event exception", it naturally follows that Examiner could not have located each claimed element of claims 1, 6, and 9 within the cited references.

Accordingly, Appellant submits that the Examiner has not established a prima facie case of obviousness.

THE REJECTION OF CLAIM 8 UNDER 35 U.S.C. § 103

Claim 8 stands or falls together with independent claim 6.

In view of the foregoing, reversal of the rejections under 35 U.S.C. § 103 is respectfully requested.

Date: December 3, 2010

Respectfully submitted,

/Steven M. Greenberg/
Steven M. Greenberg
Registration No. 44,725
Customer Number 46321

VIII. CLAIMS APPENDIX

1. (Previously Amended) A method for applying ordered modifications to recurring event instances, the method comprising the steps of:
 - identifying an event exception in a calendaring system executing in memory by a processor of a computer, the event exception corresponding to a separately defined and separately stored recurring event instance in the calendaring system; and,
 - modifying within the calendaring system at least one property of said recurring event instance based upon said separately stored event exception.
2. (Original) The method of claim 1, further comprising the steps of:
 - further identifying additional event exceptions corresponding to said recurring event instance; and,
 - for each one of said further identified additional event exceptions, further modifying at least one property of said recurring event instance based upon said one of said further identified additional event exceptions.
3. (Original) The method of claim 1, further comprising the step of repeating said identifying and modifying steps for additional ones of the recurring event instances.

4. (Original) The method of claim 1, further comprising the steps of:
further identifying event exceptions relating to said recurring event instance
which have become stale; and,
purguing said further identified event exceptions.

5. (Original) The method of claim 4, wherein said further identifying step
comprises the step of further identifying event exceptions whose specified
modifications to event properties in said recurring event instance have been
obviated by modifications specified in subsequently defined event exceptions.

6. (Previously Amended) A calendaring system comprising:
a computer with processor and memory;
a recurrence event expander disposed within a calendaring system executing
in the memory by the processor of the computer, the expander being programmed
to expand recurrence events into event instances based upon the properties
specified within the recurrence events; and,
a recurrence event modifier also disposed within the calendaring system and
coupled to said recurrence event expander, the modifier modifying properties

within the event instances based upon event exceptions defined for respective ones of the event instances and separately stored from the event instances.

7. (Previously Amended) The system of claim 6, further comprising a modification rule reducer coupled to the recurrence event modifier, the modification rule reducer inspecting older ones of the event exceptions to detect stale event exceptions.

8. (Original) The system of claim 6, wherein the calendaring system implements an iCalendar.

9. (Previously Amended) A machine readable storage having stored thereon a computer program for applying ordered modifications to recurring event instances, the computer program comprising a routine set of instructions which when executed by a machine cause the machine to perform the steps of:
identifying an event exception in a calendaring system executing in memory by a processor of a computer, the event exception corresponding to a separately defined and separately stored recurring event instance in the calendaring system; and,

modifying within the calendaring system at least one property of said recurring event instance based upon said separately stored event exception.

10. (Original) The machine readable storage of claim 9, further comprising the steps of:

further identifying additional event exceptions corresponding to said recurring event instance; and,

for each one of said further identified additional event exceptions, further modifying at least one property of said recurring event instance based upon said one of said further identified additional event exceptions.

11. (Original) The machine readable storage of claim 10, further comprising the step of repeating said identifying and modifying steps for additional ones of the recurring event instances.

12. (Original) The machine readable storage of claim 10, further comprising the steps of:

further identifying event exceptions relating to said recurring event instance which have become stale; and,

purgung said further identified event exceptions.

13. (Original) The machine readable storage of claim 12, wherein said further identifying step comprises the step of further identifying event exceptions whose specified modifications to event properties in said recurring event instance have been obviated by modifications specified in subsequently defined event exceptions.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.